

U.S. EPA Worker Protection Standard AGRICULTURAL INSPECTION GUIDANCE

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I. BACKGROUND

Since the issuance of the Worker Protection Standard (WPS) Rule in 1992 under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), the United States Environmental Protection Agency (EPA) and the State regulatory agencies have conducted extensive outreach and education, followed by compliance assistance. In 1995, the WPS became fully enforceable. In January 1994, EPA issued the WPS Inspection Guidance (EPA 722-B-94-002) for Routine Use and Misuse WPS inspections of agricultural establishments. This 1994 Guidance included sample checklists for Core and Comprehensive inspection for inspectors to use to verify the new WPS regulations (40 CFR Part 170). WPS Core Inspections procedures were defined for the routine agricultural-use inspections (using a neutral inspection scheme which is either random or targeted). Comprehensive Inspection procedures were prescribed when: (1) pesticide applications were in process during a site visit; (2) if egregious violations were suspected; or (3) if the inspector was responding to a tip or complaint of pesticide misuse especially alleging possible human exposure. This document was subsequently adopted in part by many States as their base guidance from which they developed their own State inspector checklists and WPS standard operating procedures (SOPs).

In 1999, several members of the House of Representatives, Committee on Government Reform, requested that the General Accounting Office (GAO) investigate three questions: (1) “What Federal requirements govern pesticide use as related to children in agriculture?”; (2) “What information exists on acute and chronic effects of agriculture pesticide exposure, especially to children?”; and (3) “What has EPA done to ensure that the WPS protects children and is being adequately implemented and enforced?”.

On March 14, 2000, GAO recommended that EPA strengthen its oversight of States’ implementation and enforcement of the Standard, and clearly define “what constitutes a WPS inspection” [see “Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children” (GAO/RCED-00-40)] . The GAO Report stated that EPA needed to establish minimum requirements for a WPS inspection for reporting purposes under the State Cooperative Agreements. Beginning in June 2000, EPA worked with the States to address this GAO recommendation through improvements to the WPS Core Inspection Checklist in order to define what constitutes a minimally acceptable routine WPS agricultural inspection performed within the scope of the WPS. This work resulted in the new EPA WPS Routine Agricultural-Use Inspection Guidance which was issued August 21, 2001 to State pesticide regulatory agencies for the implementation in Fiscal Years 2002-2003.

II. INTRODUCTION

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FIFRA authorizes the primary pesticide enforcement responsibility to pesticide lead agencies such as Federal, States, Tribes, and Territories (hereafter “State” is used to refer to all pesticide lead agencies, such as States, Tribes, and Territories) for pesticide use violations (FIFRA Section 26). The primary purpose of this FY 2005-2007 Guidance for WPS Agricultural Inspection is to assist State inspectors conducting WPS agricultural inspections under authority of FIFRA § 26 to ensure thoroughness and national consistency in these inspections.

Starting in November 2003, EPA re-convened the same 2000 Workgroup composed of Headquarters (OECA & OPP), EPA Regions (4, 5, & 9), and State (AZ, CA, MO, NC, SC) members [participants nominated by the State FIFRA Issues Research & Evaluation Group (SFIREG) Chairman], along with two new additional State representatives (MI, FL). This Workgroup began revision of the 2001 WPS Inspection Guidance to clarify procedures and content for conducting effective WPS inspections, based on two years of implementation and new directions in the WPS enforcement program. The revised FY 2005-2007 WPS Agricultural Inspection Guidance herein represents the recent outcome of the Workgroup’s efforts. As originally provided in the 1994 WPS Inspection Guidance, this Inspection Guidance includes the same eight critical Category areas of WPS compliance, plus three additional Categories¹ of inquiry (exposure incidents, retaliation, employer refusals) for verifying protection of agricultural employee health during those critical periods as defined by the WPS.

This WPS Guidance summarizes and clarifies the inspection Categories and Elements which States are expected to examine during all WPS agricultural inspections. The goal of the inspector is to ensure that compliance with the WPS has been met, or collect and gather all the necessary information that will determine whether a violation has been committed.

This FY 2005-2007 WPS Agricultural Inspection Guidance supercedes the EPA WPS Inspection Guidance (EPA 722-B-94-002) released January 1994 and the EPA 2002/2003 WPS Routine Agricultural-Use Inspection Guidance released July 19, 2001. This Guidance represents EPA’s recommended procedures and content for conducting complete FIFRA WPS Agricultural inspections. It is to be used by State pesticide regulatory agencies as the minimal criteria of coverage for all future routine and For-Cause WPS agricultural inspections by Federal, State, Tribal and Territorial inspectors. Deviations from this Guidance on the part of any duly authorized official, inspector, or agent to follow its contents shall not be a defense in any enforcement action; nor shall deviation from this Guidance constitute grounds for rendering the evidence obtained thereby inadmissible in a court of law.

¹Each Category in turn contains a number of bulleted Elements of compliance.

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III. DEFINING WPS AGRICULTURAL INSPECTIONS

Agricultural establishments are defined by 40 CFR § 170.3, as farms, nurseries, greenhouses, and forests. WPS agricultural inspections are conducted at agricultural establishments to ensure that users of pesticides subject to WPS comply with the requirements during the critical periods of pesticide use. This can be accomplished by examining practices of agricultural, handler, and farm labor contractor employers and their employees to ensure that they are in compliance with: (1) product-specific WPS requirements as prescribed on pesticide product labeling [personal protective equipment (PPE), Restricted Entry Intervals (REIs), and oral and posted warnings used on the establishment] and; (2) generic WPS requirements incorporated by the reference statement that appears on the labeling (pesticide safety information, decontamination supplies, safety training, emergency assistance, and worker notification).

A. Inspection Goals

The goals in conducting WPS agricultural inspections include monitoring employer compliance, documenting violations, addressing noncompliance, and increasing handler/worker safety. WPS inspections should be performed during the significant periods of the agricultural production season, such as: (1) during and after pesticide application; (2) during an REI; or (3) after an REI has expired plus 30 days. Noncompliance with WPS may result in pesticide violations -- specifically, FIFRA § 12(a)(2)(G) and defined by FIFRA § 2(ee), whereby it is unlawful for any person “to use any registered pesticide in a manner inconsistent with its labeling”.

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B. Routine (Non-Complaint Based) Inspections

This Guidance clarifies what compliance Categories (numbered below) and their Elements (bulleted items under each category) must be captured by States as applicable² during a routine WPS agricultural-use inspection to ensure compliance with the basic components of the WPS. This document includes: (1) suggested procedures for WPS agricultural-use inspections; (2) guidance on site specific information to collect; (3) assistance to inspectors in interviewing the agricultural employer, handler employer, and workers/handlers as well as in collecting pertinent information and evidence for determining employer compliance with the WPS and; (4) clarification of when a WPS agricultural-use inspection should be reported to the EPA on WPS EPA Form 5700-33H.

C. For-Cause Inspections

The revised WPS Inspection Categories and Elements presented herein should be included as well in all For-Cause (tip/complaint) inspections. During WPS For-Cause inspections, States should be thorough, examining establishment/employer compliance with all applicable WPS Categories/Elements within this Guidance, other product labeling requirements, and any other WPS provisions in the Standard, as applicable. Every effort should also be made to interview the complainant and two or more employees (workers and handlers). These For-Cause inspections should contain more detailed documentation of WPS compliance and non-compliance by the establishment/employer as compared to non-complaint inspections.

D. Other Types of WPS Agricultural Inspections

This Guidance is also applicable to WPS inspections performed at Commercial Handling Establishments, Immediate Family Exempted Facilities, and fields operated by Farm Labor Contractors (FLC). EPA understands and acknowledges that in the completion of these inspections, one or more WPS Categories/Elements as itemized in Section VI of this Guidance may not be applicable and therefore not addressed during these inspections. Nevertheless, these inspections individually may also count as WPS inspections on the EPA WPS 5700-33H Form as long as all applicable WPS Categories/Elements are examined.

²Inspections of “All Applicable” Categories and Elements refers to examining all WPS components of compliance which may apply to that particular establishment/employer being inspected at that time. A written explanation should be included in the inspection report as to why particular WPS Categories/Elements were not examined during the inspection, when appropriate to do so on that establishment.

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Commercial Applicator Establishment Inspections

Under commercial applicator establishment inspections, some WPS Categories/Elements such as Central Posting, Notice of Applications to Workers, and Early Entry Restrictions may not be applicable. These Categories/Elements need not be examined as part of the inspection, unless that handler employer also produces/maintains their own agricultural plants and hire workers for this business. This type of inspection should especially include determination of adequate communications between the commercial applicator and their customers as required information exchange (40 CFR § 170.124 & CFR § 170.224). The inspector does not necessarily have to observe an ongoing application for this to count as a WPS inspection. An attempt must be made to interview at least one handler as part of the inspection.

Immediate Family Exemption

Inspections at facilities utilizing the Immediate Family Exemption may also be considered WPS inspections if all applicable provisions as elaborated in Section VI of this Guidance are covered. However, these inspections at facilities using the Immediate Family Exemption should be considered as a low priority in a State's targeting scheme for routine WPS inspections unless the inspection is For-Cause based, for which prompt inspections are warranted.

The definition of "Immediate Family" and an exception to WPS for facilities which only employ immediate family members may be found in 40 CFR § 170.104(a), 40 CFR § 170.204(a), and WPS Interpretative Workgroup (IGW) Q&A 7.17. WPS Elements which do not need to be included in this type of inspection are Pesticide Safety Training, Central Posting, Notice of Applications, Decontamination, Emergency Assistance, Care of PPE, Monitoring Handlers, and some Early Entry duties. Facilities using the Immediate Family Exemption which are inspected need only contain an employer interview and establishment walk-around with the primary manager of that establishment. Interviews need not be conducted with other family members during this type of inspection, unless the State inspector is seeking additional information or corroboration, or has reason to believe that the information provided initially is incorrect or suspicious. When the reason for establishment inspection is complaint based, then additional family interviews are strongly recommended. If the facility employs at least one worker/handler who does not meet the definition of immediate family, then that facility does not qualify under the WPS Family Exemption and the facility is responsible for all applicable Categories/Elements within this Guidance.

Farm Labor Contractors

Inspections alone of workers hired by farm labor contractors, without additional compliance verification at the agricultural establishment owner who hires these workers, may be considered a complete WPS inspection if the State has the regulatory authority to perform these

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inspections and take enforcement action. These inspections must include an observation of field workers performing work in fields that have received a WPS-covered pesticide application, an attempt to interview at least one worker, and address of all applicable Categories/Elements. An inspection of a FLC 's office without associated visits to the farm fields and interview of workers do not qualify as a WPS inspection. Farm Labor Contractor inspections are reportable as Tier I if conducted within 30 days of the expiration of the REI and count as Tier II if conducted beyond 30 days of the REI.

Agricultural employers (owners and farm labor contractors) are jointly responsible for providing WPS protections to workers (see WPS IGW Q&A 16.12). EPA recommends that field inspections of a Farm Labor Contractor include an inspection of the establishment/employer and interview of workers hired by the FLC. Inspectors should determine who (FLC or agricultural owner) has the responsibility for compliance with applicable Category/Element of the WPS. An inspection at both the agricultural establishment and its associated workers hired by a Farm Labor Contractor may be considered as two WPS inspections if: (1) the State has the authority to conduct FLC only inspections; (2) the two different employer inspections are treated by the State as distinct and different case files and: (3) all applicable WPS Categories/Elements within this Guidance are covered.

E. Interviews

Since the intent of WPS is to assure each worker and handler receives the protections required by WPS, EPA expects that all inspectors will attempt to interview workers and handlers as part of their inspection procedures. These interviews are a critical part of assessing compliance during WPS agricultural inspections. Employee interviews are still required even if the State inspector has already obtained an admission of guilt from the employer or obtained enough evidence for violations; EPA believes that additional employee interviews under these circumstances may uncover further violations undetected through the employer interview.

Ideally, interviews should be conducted in private, without the presence of an employer or supervisor. If private interviews are not suitable, safe, or appropriate on the agricultural establishment during the inspection, then employee interviews may be conducted at a location and time convenient for the worker, such as the labor camp or private residence. If necessary, interviews may be also held at another place and time when a translator is available.

EPA recognizes that conducting interviews with workers and handlers may be difficult for several reasons. Inspectors may not be able to conduct interviews of workers and handlers despite attempts to do so during WPS inspections. When no interviews are conducted as a part of the inspection, the final inspection report must provide an explanation, which may include but is not limited to, the following situations:

- (a) No workers or handlers are present or employed at the time of the inspection;

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- (b) The employer would not consent to allow employees to be interviewed when asked;
- (c) Employees would not consent to being interviewed because of refusal, fear of retaliation or loss of wages, or another reason; and
- (d) The inspector cannot communicate with the employee because of language barriers (such as, the employee does not speak English, the inspector does not know the employee's language, or because the employee is deaf/mute and the inspector does not know sign language). Language barrier is not acceptable as a reason for not conducting an employee interview during For-Cause inspections when the employee is the complainant.

As mentioned above, language barriers between inspectors and workers/handlers may be considered as the sole explanation for not conducting interviews during routine inspections. However, **States and Tribes are strongly encouraged to develop ways to overcome this obstacle, such as using an on-site interpreter, hiring bilingual inspectors, identifying and using translator resources and translation services, and utilizing farm labor groups to provide volunteer translators.** Advanced planning will ensure that these resources are in place and available when the need arises. State inspectors must make every effort to interview workers and handlers during WPS agricultural-use inspections.

During For-Cause WPS Agricultural inspections, language barriers are also acceptable as the sole reason for not interviewing employees, except in instances where the complainant is the employee. The inspector must make every effort to overcome a language barrier to interview an employee who is the complainant in alleged For-Cause inspections. Acceptable justifications for not interviewing an employee complainant in For-Cause inspections include employee refusal to be interviewed, his/her termination of employment, and relocation/movement elsewhere without a known address or out of State.

EPA acknowledges that overcoming language barriers in employee interviews is difficult and may be impractical or resource prohibitive for some States; EPA Regions are expected to query States annually as to their efforts to improve their capacity in this area and remedy deficiencies.

F. WPS Violators and Re-Inspections

Re-inspections are considered an important component of enforcement targeting by States to verify that previous WPS violations have been corrected and that the establishment remains in full compliance with the WPS. Re-inspections are recommended to be performed with at least a percentage of previous WPS violators, the number/percentage to be determined by the State SOP and negotiated annually between the State and EPA Regions.

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Some re-inspections may be conducted shortly following an initial agricultural inspection at the same establishment/employer in order to determine if the previously identified WPS violations have been corrected. If these re-inspections consist only of the examination of those WPS Categories/Elements in which the employer was non-compliant on the previous inspection, then the State cannot count this re-inspection as a new or additional WPS inspection because not all applicable Elements were covered. This inspection is considered a continuation of the initial inspection. This re-inspection, however, may be counted on the general 5700 Form as an agricultural-use inspection. Receipt by the State of letter from the establishment/employer confirming correction of the violation(s) cited earlier by the State does not count as a formal re-inspection within this Guidance.

If WPS re-inspections consist of the examination of all applicable Categories/Elements within this Guidance (including employee interviews or written justification is provided as to why interviews are not performed) and this case is treated by the State as a separate case from an earlier inspection at the same establishment/employer, then this new re-inspection may be counted as a WPS inspection separately on the WPS 5700 Form. Factors which the States may consider in determining which establishments/employers to re-inspect may include the number and severity of WPS violations, previous non-compliance FIFRA history, associated alleged employee pesticide exposures, State Enforcement Response Policy, staff workload, department resources, and employer's sincere interest to come into compliance.

G. Maintaining Flexibility through Partnership

EPA recognizes that State pesticide inspection programs may choose to perform a combination of compliance assistance and monitoring activities at agricultural establishments. EPA recognizes that States are able to conduct WPS inspections and take enforcement actions both within and outside of the REI plus 30-day windows of time. However, all effort should be made to conduct WPS inspections during the growing season when pesticide applications are occurring and when WPS requirements are in effect.

IV. REPORTING WPS AGRICULTURAL INSPECTIONS

States should report all their agricultural inspection activities as WPS agricultural inspections both on the general EPA Form 5700-33H and WPS specific modified 5700-33H Form (Appendix 3a), as appropriate. On the general 5700 Form, the number of WPS cases and their related enforcement actions plus all other non-WPS enforcement cases and actions should be reported. On the WPS specific 5700 Form, only the number of WPS cases and their related enforcement actions should be reported. EPA strongly encourages that States report all WPS inspections on both Forms, regardless if funded with State or Federal monies. WPS inspection accomplishments may be reported on the WPS 5700 Form ONLY when the following conditions

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are met:

- (1) pesticides with WPS labeling have been used on the establishment;
- (2) all the applicable WPS agricultural inspection Categories/Elements as described in Section VI have been covered in the inspection, and;
- (3) the inspector has interviewed (or attempted to interview) one or more available employed workers **AND** handlers as part of the inspection.

Inspections which fall short of any of the above criteria **CANNOT** be counted as a WPS inspection on the EPA WPS 5700 Form, but may be still reported as a general agricultural-use inspection on the general EPA 5700 Form.

EPA is committed to developing and maintaining a WPS enforcement Program with national consistency for annual inspection reporting, while recognizing the value of flexibility and State workloads in the timing of these inspections. Therefore, EPA is retaining the two types of WPS agricultural inspections - WPS Tier I and Tier II Compliance Monitoring Inspections for reporting on the WPS EPA Form 5700-33H. If any inspection does not meet the criteria to be counted as a WPS inspection, either Tier I or II, it may still be counted as a general Agricultural-use or For-Cause inspection if it qualifies according to the Use/For-Cause definitions in the 5700 Guidance.

Starting with the FY 2005 grant cycle, States are encouraged to submit information on the specific areas (Categories) where these WPS violations are occurring. These data are to be provided on the EPA WPS 5700 Form (Appendix 3d), modified for this purpose. EPA acknowledges that many States have already been capturing these details on WPS violations at inspected establishments. Provision of these details to EPA will better highlight areas of the Rule where compliance difficulties remain, where compliance assistance activities and enforcement targeting may be focused, and used to monitor national trends (or serve as environmental indicators) year-to-year. Each State in-turn should be using these data about specific WPS violative areas to feedback into future compliance assistance efforts and future enforcement targeting.

<p>The ONLY difference between WPS Tier I and II Compliance Monitoring Inspections is whether the WPS inspection is performed within 30 days (Tier I) or after 30 Days (Tier II) of the expiration of the REI.</p>

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A. Reporting WPS Tier I Inspections

Any agricultural inspection which is conducted during the time frame that starts when pesticides are applied and ends 30 days after expiration of the REI, and which covers all applicable WPS Inspection Categories/Elements, including conducting or attempting to conduct handler and/or worker interviews, should be reported as a WPS Tier I Compliance Monitoring Inspection. During this period, as described in 40 CFR § 170.9, all provisions of the WPS can be appropriately verified and if violations are observed, the WPS is fully enforceable based on the observations and information collected by the inspector.

EPA expects State inspectors to cover, to the fullest extent possible, all the Inspection Categories and Elements as applicable. The final inspection report shall provide a written explanation for Inspection Categories/Elements not addressed during inspection. Furthermore, EPA will not consider an agriculture inspection as a WPS Tier I inspection unless the inspector has been successful in interviewing workers and handlers or has provided written explanation for why no workers and/or handlers were interviewed.

B. Reporting WPS Tier II Inspections

Any agriculture-use inspection which is conducted beyond 30 days after expiration of the REI, and which covers all applicable WPS Inspection Categories/Elements, including worker and/or handler interviews, should be reported as a WPS Tier II Compliance Monitoring Inspection.

EPA recommends that WPS Tier II Compliance Monitoring Inspections be conducted within the current growing season or in the next growing season not exceeding six months from the last date of application.

C. Reporting Other Types of WPS Agricultural Inspections

Commercial Applicator Establishment Inspections

Inspections at a commercial applicator establishment ONLY may count as an acceptable WPS inspection as long as all applicable WPS Categories/Elements in this Guidance are covered, an attempt is made to interview at least one handler, and this inspection is treated as a distinct case file by the State. These inspections are counted either as Tier I (within 30 days of REI) or Tier II (after 30 days of REI) in the same way as agricultural-use establishment inspections.

An inspection at both a commercial applicator establishment, and an inspection at an

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agricultural establishment to which it is associated, (customer/client), may count as two WPS inspections if: (1) the two different employer inspections are treated by the State as distinct and different case files; (2) all applicable WPS Categories and Elements within this Guidance are covered and; (3) an attempt is made to interview employees at each establishment. Each inspection will be separately counted as either Tier I (within 30 days of REI) or Tier II (after 30 days of REI).

If the commercial applicator establishment also commercially produces/maintains agricultural plants, then that single site inspection may count as two WPS inspections only if: (1) the same employer inspection is treated as two separate and distinct inspections by the State, one for their own agricultural production and one for their relationship with other agricultural establishments as a commercial applicator; (2) all applicable WPS Categories and Elements within this Guidance are covered and; (3) an attempt is made to interview at least one worker and handler for the agricultural production component of the business, and at least one handler for the commercial applicator component of the business. If otherwise, the single site inspection may only count as one WPS inspection. Each of these components for the employer are to be counted as either Tier I (within 30 days of REI) or Tier II (after 30 days of REI), depending on the inspection date and last application date for each the agricultural production and commercial applicator portion of the business.

Immediate Family Exemption

Inspections conducted at Farms utilizing the Immediate Family Exemption may count as an acceptable WPS inspection as long as all applicable WPS Categories/Elements in this Guidance are covered. Similar to non-family agricultural inspections, Family-Exempted Farms may be counted either as Tier I (within 30 d of REI) or Tier II (after 30 d of REI). Inspections at facilities using the Immediate Family Exemption should be considered as a low priority in a State's routine targeting scheme.

Farm Labor Contractors

Field inspections of workers hired by a farm labor contractor without an associated inspection of the agricultural establishment/employer who hires the Contractor may count as a WPS inspection if all applicable Categories/Elements as itemized in this Guidance are covered and the State has regulatory authority to perform these types of inspections and take enforcement. However, whenever possible, EPA encourages States to perform co-inspections of both the workers of a Labor Contractor and the affiliated agricultural establishment/employer in order to obtain a clear and complete assessment of WPS compliance. An inspection of a FLC office only cannot count as a WPS inspection, nor as a regular agricultural use inspection on the Federal 5700 Form. Farm Labor Contractor inspections are countable as a Tier I (within 30 days after REI) and count as Tier II (after 30 days of REI). An inspection at both the agricultural establishment and its associated workers hired by a Farm Labor Contractor may be considered as

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two WPS inspections if: (1) the State has the authority to conduct FLC only inspections; (2) the two different employer inspections are treated by the State as distinct and different case files; (3) all applicable WPS Elements within this Guidance are covered and; (4) an attempt is made to interview employees. Otherwise, an inspection of the agricultural employer and his/her associated FLC may only count as one WPS inspection.

D. Reporting WPS For-Cause Inspections

Complaint-based, for-cause WPS inspections and those alleging human health exposures should be more thoroughly and completely documented than Routine (non-complaint) inspections. These For-Cause compliance monitoring inspections should utilize this revised Guidance, verifying all provisions of the WPS as applicable. These For-Cause inspections are to be counted as either Tier I (within 30 days of REI) or Tier II (after 30 days of REI) on the EPA 5700 Form.

E. WPS Re-Inspections

Re-inspections of an establishment/employer who was previously in violation of the WPS must be complete, covering all applicable WPS Categories and Elements in this Guidance, as well as employee interviews (or written justification why the interview was not performed) in order to be reportable as a complete Federal WPS inspection. Re-inspections may be counted as Tier I if conducted within 30 days of the REI and are Tier II if conducted after 30 days of the REI. Re-inspections which consist only of an examination of the Categories and Elements in which the employer was previously in violation, without covering all applicable other Elements or interviewing employees, cannot be reported as a Federal WPS inspection because these inspections are incomplete. However, these incomplete WPS re-inspections may be counted as an agricultural-use inspection to EPA. Receipt by the State of a letter from the employer indicating where violations have been corrected does not count as a re-inspection, either as WPS or regular agricultural use. This employer letter is considered by EPA as only part and closure of the initial inspection which discovered these violations.

F. Linkage to EPA Cooperative Agreement Guidance and State Workplan

WPS compliance monitoring and enforcement remains a priority with EPA. Through the implementation of this Guidance, national consistency should be achieved in the thoroughness of WPS inspections. EPA expects all States to perform thorough WPS inspections, appropriately documenting violations observed and preparing a complete file necessary for and taking appropriate enforcement actions in accordance with their State enforcement response and penalty policies. Compliance assistance in lieu of enforcement is not acceptable as a response to violations documented during WPS inspections.

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EPA expects that each State will negotiate annually with EPA Regional Offices for a projected number of WPS Tier I inspections, based in part on the Federal and State funds available. The number of projected WPS Tier I inspections should outnumber the number projected for Tier II. Each State should develop their own inspection targeting scheme, based in part on recommendations provided in the EPA 1992 State Compliance Monitoring Strategy, the 1994 WPS Inspection Guidance (available from EPA's Agricultural Center), the general Cooperative Agreement Guidance or a State's own Enforcement Response Policy or enforcement Standard Operating Procedure to annually target WPS inspections. This written WPS targeting scheme should be included within the annual Workplan. More specific coverage of the former available reference documents on WPS inspection targeting, and related expectations of EPA, are included in Appendix 6 of the general Cooperative Agreement Guidance. States should work closely with their EPA Regional office on these annual WPS enforcement commitments, and to address State specific issues or problems which may impeded compliance monitoring and enforcement.

V. WPS AGRICULTURAL INSPECTIONS PROCEDURE

The following is a brief summary of the inspection procedures for WPS inspections. EPA, States and Tribes are encouraged to incorporate these procedures into WPS agricultural inspections. Inspectors should follow protocols according to established State procedures.

1. **ENTRY PROCEDURES** (according to State procedures) – present identification, present credentials, issue Notice of Inspection³ when required.
2. **PERFORM THE INSPECTION** – use tools to facilitate adequate coverage of the WPS inspection Categories/Elements, such as a checklist, field notebook, questionnaire, interviews, survey.
 - A) **EMPLOYER INTERVIEW**
 - B) **CONDUCT LABEL REVIEW OF PESTICIDES ON SITE** – note the requirement for PPE, REI, decontamination supplies, etc.
 - C) **COLLECT EVIDENCE** – copies of training records, pesticide labels, and application records; take photos of central location, mix/load sites, pesticides being applied, potential violations observed; and collect signed statements from interviewees in accordance with State procedures when violations are found.
3. **PERFORM WORKER AND HANDLER INTERVIEWS** - conduct in private, without the presence of an employer or supervisor. If no interviews are conducted, the final

³ FIFRA requires that a Notice of Inspection (NOI) be provided whenever an inspection is to be conducted under the authority of this Act. When Federal EPA credentials are used to conduct a FIFRA inspection, the inspector must issue a NOI the establishment owner or person being inspected. States may have similar requirements when conducting inspections under their authority.

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inspection report must provide an explanation; **States/Tribes are strongly encouraged to develop ways to overcome language barriers.**

4. **PREPARE INSPECTION REPORT** - include a written narrative, attach supportive documentation, interviews and statements, as necessary and in accordance with inspection guidance procedures to support suspected violations. The final report should establish the compliance status of a establishment in an factual, objective and consistent manner.

VI. BASIC WPS COMPLIANCE INSPECTION CATEGORIES AND ELEMENTS FOR WPS AGRICULTURAL INSPECTIONS

In the interest of national consistency, EPA, in cooperation with States, has developed the following procedures and Inspection Elements divisible under compliance Categories for both the WPS Tier I and Tier II Compliance Monitoring Inspections. These Inspection Elements are to be incorporated into the inspection tools (checklist, survey, and questionnaire formats), SOPs and training programs as appropriate. With the release of this revised Guidance, there is an expectation that all States will re-examine their existing WPS inspection form and checklist against this Guidance to ensure that procedures are appropriate and that all listed Categories and Elements are included.

EPA also recognizes that direct observation of employees engaged in handling or field worker activity is the preferred method of determining compliance. However, inspectors must still attempt to interview workers and handlers in order for the inspection to be considered complete for Federal reporting.

A. EPA Recommended Site Specific Information Collection

States should consider their entire pesticide program in determining the appropriate procedures for collection and documentation of site specific information.

Document:

- n** Whether the inspection is unannounced or announced.
- n** The Agricultural Establishment type - farm, nursery, greenhouse, forest as defined by 40 CFR § 170.3; estimated total area; owner/manager of the establishment.
- n** Types of crops grown for commercial or research purposes.
- n** Who applies pesticides - self apply, employees, or for-hire commercial applicator or combination.
- n** Who has control over/directs pesticide use.
- n** Number of certified applicators.
- n** Estimated number of Workers and Handlers present during inspection; within the last 30 days and/or when a pesticide was last applied; estimated number of permanent and

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seasonal workers and handlers working for the establishment.

n Pesticide product label information for the applications administered and the last date(s) application(s) .

n Document whether the pesticide label include WPS reference statement; list product name and EPA Registration Number, REI, required PPE, and decontamination supplies.

B. EMPLOYER/SUPERVISOR INTERVIEWS

The agricultural employer, as defined by 40 CFR § 170.3, may include owners and managers of agricultural establishments and employers of agricultural workers and handlers, commercial applicator employer and farm labor contractors. These employers are responsible for complying with all WPS provisions under 40 CFR Part 170. The inspector should conduct an agricultural establishment site visit that includes: 1) examination of the pesticide storage area; 2) review of pesticides for specific WPS labeling requirements (PPE, double notification, REI, etc.); 3) interviews and; 4) evaluation of all applicable inspection Categories and their Elements as itemized below to determine the compliance with the provisions of the WPS.

1. PESTICIDE SAFETY TRAINING

Worker Pesticide Safety Training (40 CFR § 170.130) – An agricultural employer shall assure that each worker has been trained according to this section.

Handler Pesticide Safety Training (40 CFR § 170.230) – A handler employer shall assure each handler has been trained in accordance with this section.

n Verify that either basic pesticide safety information or full training was provided to workers/handlers before they entered treated areas.

n Identify who trains Workers/Handlers and their qualifications.

n Examine training materials used (e.g. video, handbooks, flipcharts, interactive, etc.).

n Verify when/how often training is held. Examine written verification of training, if available.

n Verify if heat-related stress was discussed in the training.

n Verify if the appropriate use of PPE was demonstrated to handlers.

2. CENTRAL POSTING [exclude for commercial applicator employers]

Specific Information About Applications (40 CFR § 170.122) – An agricultural employer shall display required information about a pesticide when workers are on the establishment

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Worker Posted Pesticide Safety Information (40 CFR § 170.135) – When workers are on an agricultural establishment . . . , the agricultural employer shall display, in accordance with this section, pesticide safety information.

Handler Posted Pesticide Safety Information (40 CFR § 170.235) -- When handlers (except those employed by a commercial pesticides handling establishment) are on an agricultural establishment . . . , the handler employer shall display, in accordance with this section, pesticide safety information.

Displayed Emergency Medical Care Information (40 CFR § 170.135(c)) – The agricultural employer must display the name, address, and telephone number of the nearest medical care facility.

n Verify that required information located at the central location can readily be seen and read by workers and handlers (e.g., office, outdoors, breakroom, etc.), where workers and handlers are likely to congregate or pass; that workers/handlers are informed of the location; and that the location is open and accessible during normal business hours.

n Verify that the locations and descriptions of treated areas allow employees to distinguish treated areas from others on establishment.

n Verify the safety poster and its content; emergency care information; and pesticide application records are current, complete, legible, and accessibly posted.

n Verify that the nearest emergency medical facility address and telephone number are displayed (911 alone is not acceptable).

3. NOTICE OF APPLICATION [exclude for commercial applicator employers]

Notification to Workers of Pesticide Application in Greenhouses, on Farms, in Nurseries, or in Forests (40 CFR § 170.120) – An agricultural employer shall notify workers of any pesticide application in accordance to this section.

n Verify how workers and handlers are notified of pesticide applications and if the notification is in accordance to those specific labeling requirements - oral, posted signs, or both.

n Identify who notifies workers and handlers of applications.

n Verify if posting is in accordance with WPS requirements; the warning sign placement is within required time (pre-application), and post REI removal.

n Determine how warnings are communicated to non-English speaking workers.

4. ENTRY RESTRICTIONS [exclude for commercial applicator employers]

Restrictions Associated with Pesticide Applications on Farms, Forests, Nurseries, and Greenhouses (40 CFR § 170.110) – An agricultural employer shall not allow or direct

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any person other than appropriately trained and equipped, from entering or remaining in the treated area during a pesticide application until the time specified by label and regulations has elapsed.

General Entry Restrictions (40 CFR § 170.112) – An agricultural employer shall not allow any worker to enter or remain in the treated area before the REI specified on the labeling has expired, except as provided in this section.

Restrictions during Applications (40 CFR § 170.210) – A handler employer and employees shall assure that no pesticide is applied so as to contact, either directly or through drift, any worker or other person, other than an appropriately trained and equipped handlers.

- n** Verify if access is restricted during applications and REIs; if any early-entry activities have occurred; how workers are informed about product labeling restrictions under early-entry activities.

- n** Verify if PPE, as required by label, was available and used by early-entry workers.

5. PERSONAL PROTECTIVE EQUIPMENT (PPE) [exclude for Farm Labor Contractor Employers]

General entry restrictions (40 CFR § 170.112(a)(4)) – An agricultural employer shall assure that any worker entering the treated area, under the REI as specified by this section, uses PPE specified in the product labeling for early-entry.

PPE requirements (40 CFR § 170.240) – Any person performing tasks as a pesticide handler shall use clothing and PPE specified on the labeling of the product.

- n** Examine the type of the Handler/Worker early-entry PPE to determine if it is appropriate according to label requirements, and accessible to employees.

- n** Identify who provides proper PPE use instructions and ensures it is used as intended; who is responsible for: PPE maintenance and care; frequency of which PPE cleaned; frequency respirator filter is replaced; where PPE stored and changed.

- n** Verify that employees are provided warnings not to take PPE home.

6. MIXING/LOADING, APPLICATION EQUIPMENT & APPLICATIONS [exclude for Farm Labor Contractor Employers]

Restrictions during Applications (40 CFR § 170.210) – A handler employer shall assure that any handler, performing handling activities with pesticides labeled with skull & crossbones symbol, is monitored as specified under this section.

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A handler employer shall assure that any handler who handles a fumigant in a greenhouse, including any handler entering the greenhouse, before the acceptable inhalation exposure level or ventilation criteria has been met, to monitor air levels or initiate ventilation maintains continuous visual or voice contact with another handler and has immediate access to PPE as required by label.

- n** Identify who instructs handlers in use or equipment and applications.
- n** Verify if handler is provided labeling or access to labeling.
- n** Verify that the equipment is working and safe; maintained and repaired.
- n** Verify that handlers are monitored during greenhouse fumigations and that this other handler has immediate access to labeled PPE for rescue.
- n** Verify that handlers are monitored during handling of skull/crossbones labeled products.
- n** Determine that other persons are not allowed in area(s) during the application.

7. DECONTAMINATION

Worker Decontamination (40 CFR § 170.150) – An agricultural employer must provide decontamination supplies for workers in accordance with this section.

Handler Decontamination (40 CFR § 170.250) – A handler employer shall provide decontamination supplies during any handling activity, in accordance to this section, for removing pesticides and pesticide residues.

- n** Verify if the employer provided decontamination supplies to employees for washing off pesticide residues for any activity
- n** Verify if decontamination supplies are accessible to workers and handlers and are not in an area being treated with pesticides or is under a restricted-entry interval.
- n** Verify that the location of decontamination supplies is within 1/4 mile for Workers/Handlers, at the mixing site for mixing activities, and, at the aircraft's loading site or in the plane for pilots.
- n** Verify the contents provided -- soap, water, single use towels; change of clothing for handlers; eye wash, etc.
- n** Verify that an eye flush dispenser with at least one pint of water for handlers and early entry workers for activities permitted by 40 CFR § 170.112 and for which the pesticide labeling requires protective eyewear.

8. EMERGENCY ASSISTANCE and PESTICIDE EXPOSURE INCIDENTS

Worker Emergency Assistance (40 CFR § 170.160) – An agricultural employer shall make available emergency medical assistance to any person who, is or has been

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employed on the agricultural establishment to perform tasks related to the production of agricultural plants and has been poisoned or injured by exposure to pesticides used on the establishment.

Handler Emergency Assistance (40 CFR § 170.260) – A handler employer shall make available emergency medical assistance to any person who, is or has been employed by an agricultural establishment or commercial pesticide handling establishment to perform pesticide handling tasks, and has been poisoned or injured by exposure to pesticides used on the establishment.

- Verify the procedure for reporting pesticide-related illnesses.
- Identify who provides pesticide information to medical personnel/victim; who provides transportation to emergency medical facility.
- Determine if there have been any exposure incidents, including drift; if yes discuss details of incidents and examine records of incidents if available.

9. INFORMATION EXCHANGE - COMMERCIAL APPLICATORS & GROWERS

Handler Employers Receipt of Notice of Applications (40 CFR § 170.124) – A agricultural employer shall provide to any commercial handler employer, or assure awareness of, specific information about all applications the handler may be within 1/4 mile of.

Agricultural Employers Receipt of Notice of Applications (40 CFR § 170.224) – A handler employer shall provide to any agricultural employer, or assure awareness of, specific information about the application of any pesticide on or in an agricultural establishment before any application.

- Verify if pesticide application information is exchanged between the agricultural establishment employer and handler employer.
- Determine how information is exchanged, when, and between whom.
- Verify if and how label and application information is exchanged between the agricultural establishment employer and the Farm Labor Contractor employer.

10. EMPLOYEE REFUSALS

Although the WPS identifies the agricultural employer as responsible for ensuring that PPE is used during pesticide use, workers do not enter a treated area before the expiration of the label-required REI, and pesticide safety training is provided, workers may refuse to comply with these requirements. State inspectors are encouraged to identify these situations and record the details of incidents. This may include, but is not limited to:

- Identify problems with handlers refusing to comply with the WPS, such as not

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wearing PPE, taking PPE home, not following label directions, improperly using application equipment, entering posting fields, etc.

n Identify problems with Workers refusing to comply with the WPS, such as entering treated fields or violating other restrictions.

C. HANDLER INTERVIEWS

The following Inspection Categories and Elements are provided to assist inspectors in interviewing handlers on an agricultural establishment, as part of a WPS Tier I or Tier II Compliance Monitoring inspection. Interviews may be conducted privately and without the presence of employer or supervisor; at a convenient location, such as the labor camp or private residence, and at a time other than during inspection, depending on the circumstances. If no interviews are conducted, the final inspection report should provide an explanation, such as handler would not consent, language barrier with no available interpreter (except in For-Cause inspections for the employee who is the complainant); possible fear of retaliation, etc.

1. PESTICIDE SAFETY TRAINING

Pesticide Safety Training for Handlers (40 CFR § 170.230) – Before any handler employee performs any handling task, the handler employer shall assure each handler has been trained in accordance with this section.

n Verify when handlers are trained (before any handling tasks?).

n Identify who trains the handlers; what materials are used (e.g. video, handbook, interactive).

n Verify appropriate use of PPE.

n Verify if Heat Stress training and monitoring is covered.

n Verify that the training is current - ask to see a valid applicator certification, EPA WPS Handler Training Verification Card, or other record of proof if available.

2. CENTRAL POSTING

Specific Information about Applications (40 CFR § 170.222) – The agricultural employer shall display specific information about pesticide applications within the last 30 days.

n Verify that handlers know where information is centrally posted.

n Verify if application records posted at the central location are updated regularly; identify who regularly updates this application information.

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3. PESTICIDE APPLICATIONS

Restrictions during Applications (40 CFR § 170.210) – A handler employer shall assure that any handler, performing handling activities with pesticides labeled with skull & crossbones symbol, is monitored as specified under this section.

A handler employer shall assure that any handler who handles a fumigant in a greenhouse, (including any handler entering the greenhouse before the acceptable inhalation exposure level or ventilation criteria has been met to monitor air levels or initiate ventilation) maintains continuous visual or voice contact with another handler and has immediate access to PPE as required by label.

Knowledge of labeling and site specific information (40 CFR § 170.232) – A handler employer shall assure before the handler performs any handling activity, the handler has read the product labeling or has been informed in an understandable manner of all labeling requirements.

Safety Operation of Equipment (40 CFR § 170.234(a)) – A handler employer shall assure that before any handler uses any equipment, the handler is instructed in its safe operation; the equipment is inspected, repaired or replaced, and pesticide residues had been removed from equipment prior to maintenance, or person performing maintenance has been notified of pesticide contamination.

- Verify that the label is accessible or label information has been provided in an understandable manner.
- Verify that handlers are trained in equipment use.
- Identify who cleans and maintains equipment.
- Verify if access is restricted during applications and REIs.
- Verify that handlers are monitored during greenhouse fumigations and how (constant voice or visual contact).
- Verify that handlers are monitored during handling of skull/crossbones labeled products and how (voice or visual contact every 2 hrs).
- Verify that handlers who monitor greenhouse fumigators have immediate access to PPE.
- Identify if handler(s) use closed system, enclosed cab, open or closed cockpit, and any reduced PPE substituted for these systems.

4. PERSONAL PROTECTIVE EQUIPMENT (PPE)

PPE requirements (40 CFR § 170.240) – Any person performing tasks as a Pesticide handler shall use clothing and PPE specified on the labeling for use of the product.

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- n** Verify PPE is provided and it is appropriate according to the label.
- n** List PPE the handler(s) use for the labels examined.
- n** Identify who cleans and maintains the PPE.
- n** Identify where handlers change and store PPE or personal clothing.
- n** Identify whether handlers know not to wear/take home PPE.

5. DECONTAMINATION SUPPLIES

Decontamination (40 CFR § 170.250) – A handler employer shall provide decontamination supplies during any handling activity, in accordance to this section, for removing pesticides and pesticide residues.

- n** Verify that decontamination supplies are provided and what are the contents (soap, water, towels, change of clothing, eye wash).
- n** Verify if supplies are located within 1/4 mile from each handler during handling activity.

6. EMERGENCY ASSISTANCE

Emergency Assistance (40 CFR §170.260) – A handler employer shall make available emergency medical assistance to any person employed by an agricultural establishment or commercial pesticide handling establishment, to perform pesticide handling tasks, and who has been poisoned or injured by exposure to pesticides as a result of employment.

- n** Establish that the agricultural establishment has procedures in place in case of a pesticide exposure incident.
- n** Identify who provides transportation to emergency medical facility; who provides information to medical personnel/victim.

7. RETALIATION

Prohibited Actions (40 CFR § 170.7(b)) – An agricultural or handler employer shall not take any retaliatory action for attempts to comply with WPS or take any action having the effect of preventing or discouraging any worker or a handler from complying or attempting to comply with any requirement of this part.

- n** Verify that handlers are allowed to comply without employer hindrance. If not:
 - E** Determine if there have been any incidents of retaliation related to compliance with the WPS and if yes, discuss and record the details of incidents.

8. PESTICIDE EXPOSURE INCIDENTS

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- n** Determine if the agricultural establishment has procedures in place for reporting pesticide-related illnesses.
- n** Determine if there have been any exposure incidents, including drift; if yes, record the details of incidents.

D. WORKER INTERVIEWS

The following Inspection Elements are provided to assist inspectors in interviewing workers on an agricultural establishment, as part of a WPS agricultural-use inspection. Interviews should be conducted privately without the presence of the employer or supervisor; at a convenient location, such as the labor camp or private residence; during the inspection or at a different time and day, depending on the circumstances. Inspectors are expected, and should make every effort, to interview workers as part of an establishment inspection. If no workers are interviewed, the final inspection report should provide an explanation, such as, “workers were not present at the time of inspection”, “unavailable for interview because...”, “would not consent to an interview when asked”, “language barrier with no available interpreter” (except in For-Cause inspections for the employee who is the complainant), “possible fear of retaliation”, etc. Inspections of workers hired by a farm labor contractor must include as well an observation of workers performing work in fields covered by a WPS pesticide application.

1. PESTICIDE SAFETY TRAINING

Pesticide Safety Training for Workers (40 CFR § 170.130) – An agricultural employer shall assure that each worker, required to be trained, has been trained according to this section.

- n** Verify if workers have been provided basic and/or full WPS safety training.
- n** Identify who conducts training and what materials are used (video, handbook, flipchart, interactive materials/instruction).
- n** Verify that the training is current - ask to see an EPA WPS Worker Training Verification Card or other record of proof if available.

2. CENTRAL POSTING

Specific Information About Applications (40 CFR § 170.122) – An agricultural employer shall display required information about a pesticide when, workers are on the establishment and, within the last 30 days a pesticide subject to WPS has been applied on the establishment, or after an REI has been in effect.

Posted Pesticide Safety Information for Workers (40 CFR § 170.135) – An agricultural

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employer shall display pesticide safety information when workers are on the agricultural establishment and, within the last 30 days, a pesticide subject to WPS has been applied, or an REI has been in effect.

Display of Emergency Medical Care Information (40 CFR § 170.135(c)) – The agricultural employer must display the name, address, and telephone number of the nearest medical care facility.

- n** Verify if workers know where the central posting information is located.
- n** Determine if workers know what type of information is posted.

3. NOTIFICATION OF TREATED AREAS

Notification to Workers of Pesticide Applications in Greenhouses, on Farms, in Nurseries, or in Forests (40 CFR § 170.120) – An agricultural employer shall notify workers of any pesticide application in accordance to this section.

- n** Determine how workers are notified about treated areas – oral, posted signs, or both.
- n** Verify if workers understand what the posted sign mean.
- n** Identify who is responsible for notifying the workers.
- n** Identify who posts signs and when; if signs are removed when no longer applicable.
- n** Verify how warnings are communicated to non-English speaking workers.

4. DECONTAMINATION SUPPLIES

Decontamination (40 CFR § 170.150) – An agricultural employer must provide decontamination supplies for workers in accordance with this section.

- n** Verify that supplies are accessible to workers and identify the contents provided – soap, water, towels, eyeflush if required).
- n** Verify if supplies are located no more than 1/4 mile from work site.

5. EARLY ENTRY

Restrictions Associated with Pesticide Applications on Farms, Forests, Nurseries, and Greenhouses (40 CFR § 170.110) – An agricultural employer shall not allow or direct any person, other than those appropriately trained and equipped, to enter or remain in the treated area during a pesticide application until the time specified by label and regulations has expired.

General Entry Restrictions (40 CFR § 170.112) – An agricultural employer shall not allow any worker to enter or remain in the treated area before the REI specified on the

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labeling has expired except as provided in this section.

- n** Note if there are any early-entry activities.
- n** Verify if workers are fully trained.
- n** Verify if workers been informed of label safety requirements.
- n** Verify if early-entry PPE is provided and workers instructed in its use.
- n** Verify that appropriate use of PPE and heat stress training is covered for early-entry.

6. HANDLER TASKS

- n** Inquire if workers are asked to do handler tasks.
- n** Verify that handler training and PPE is provided if handler tasks are performed.

7. EMERGENCY ASSISTANCE

Emergency assistance (40 CFR § 170.160) – An agricultural employer shall make available emergency medical assistance to any person who, is or has been employed on the agricultural establishment to perform tasks related to the production of agricultural plants, and who has been poisoned or injured by exposure to pesticides used on the establishment.

- n** Inquire as to the agricultural establishment's policy in case of a pesticide exposure incident.
- n** Determine who is contacted in an emergency.
- n** Determine who provides transportation to emergency medical facility.

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8. RETALIATION

Prohibited Actions (40 CFR § 170.7(b)) – An agricultural or handler employer shall not take any retaliatory action against any worker or handler for attempts to comply with WPS or take any action having the effect of preventing or discouraging any worker or A handler from complying or attempting to comply with any requirement of this part.

n Verify that workers are allowed to comply without employer hindrance. If not:

E Determine if there have been any incidents of retaliation related to compliance with the WPS and if yes, discuss and record the details of incidents.

9. PESTICIDE EXPOSURE INCIDENTS

n Inquire about the procedure for reporting pesticide-related illnesses.

n Determine if there have there been any exposure incidents, including drift; if yes, record the details of incidents.

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VII. CLARIFYING QUESTIONS AND ANSWERS

1. **When does an Ag-use inspection NOT count as a WPS inspection?**

An agricultural-use inspection does not count as a WPS inspection if:

- No pesticides with WPS labeling have been used on the establishment, or
- The applicable WPS Inspection Categories/Elements for routine WPS Agricultural-use inspections are not covered during the inspection, or
- No workers or handlers are interviewed as part of the inspection although employed at the time of the inspection or no written explanation is provided for lack of any interviews.

2. **Does an inspection of a Commercial Applicator Establishment count as a WPS inspection?**

Yes, when the commercial applicator is using a pesticide with WPS label requirements. The inspection must include all applicable WPS Inspection Elements as discussed for Tier I or Tier II WPS Compliance Monitoring Inspections. WPS elements which need not be examined are Central Posting, Notice of Applications to workers, and Entry Restrictions, unless the same commercial handler establishment also produces/maintains their own agricultural plants and hire workers for this business. This type of inspection should especially focus on determining that adequate communications occur between the commercial applicator and their customers as required. The inspector does not necessarily have to observe an ongoing application for this to count as a WPS inspection. An attempt must be made to interview at least one handler as part of the inspection. If a separate inspection of the agricultural establishment, who is a customer/client of the commercial applicator, is also conducted, following the criteria for Tier I or Tier II WPS Compliance Monitoring Inspections, and this case is handled as a separate case file by the State, then both inspections may be credited as routine WPS agricultural-use inspections.

3. **Does an inspection of a Commercial Applicator Establishment who also produces/maintains their own agricultural plants count as one or two WPS inspections?**

Yes, it may count as two inspections under the appropriate conditions. An inspection of the same employer/establishment who operates both a commercial application business and a commercial producer of agricultural plants may count as two WPS inspections only

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if: (1) the same employer inspection is treated as two separate and distinct inspections by the State, one for their own agricultural production and one for their relationship with other agricultural establishments as a commercial applicator; (2) all applicable WPS Categories and Elements within this Guidance are covered and; (3) an attempt is made to interview at least one worker and handler for the agricultural production component of the business, and at least one handler for the commercial applicator component of the business. If otherwise, the single site inspection may only count as one WPS inspection. Each of these components for the employer are to be counted as either Tier I (within 30 days of REI) or Tier II (after 30 days of REI), depending on the inspection date and last application date for each the agricultural production and commercial applicator portion of the business.

4. Does an inspection at a Facility operating under the Immediate Family Exemption fall within this Guidance and count as a minimal WPS inspection?

Yes, a WPS inspection at a Facility employing only immediate family members may count as a full WPS inspection on the EPA Form 5700-33H as long as all applicable Categories and Elements within this Guidance are covered. Inspections at facilities using the Immediate Family Exemption should be considered as a low priority in a State's routine targeting scheme. The Standard (40 CFR 170.104(a)) exempts owners and their immediate family from some provisions. Therefore, inspections at Farm utilizing the Immediate Family Exemption need not include Categories of this Guidance such as Pesticide Safety Training, Central Posting, Notice of Applications, Decontamination, Emergency Assistance, care of PPE, monitoring handlers, and some Early-Entry duties. However, EPA recommends that agricultural owners still try to provide these WPS protections to their family members even if not required to do so. Inspections at facilities compliant with the Immediate Family Exemption need not include interview(s) of other immediate family members, but EPA recommends additional family member interviews if the State inspector is seeking additional information or corroboration, or has reason to believe that the information provided initially is incorrect or suspicious. When the reason for establishment inspection is For-Caused based, then additional family interviews are strongly recommended. If the facility employs at least one worker/handler who does not meet the definition of immediate family, then that facility does not qualify under the WPS Family Exemption and is responsible for compliance with all the Categories/Elements within this Guidance as applicable.

5. Does an inspection of only workers employed by a Farm Labor Contractor count as a WPS inspection?

Yes, if workers are observed performing tasks in the fields, all applicable Categories/Elements within this Guidance are covered, effort is made to interview one or more workers, and the State has the regulatory authority to perform these inspections and

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take enforcement action. These inspections must include visual examination of all applicable compliance Categories/Elements.

The agricultural establishment owner, operators and employers, including labor contractors, are jointly responsible for providing training and other WPS protections to workers, and for ensuring compliance with WPS requirements. The agricultural owner, operator and employer, including labor contractors, each may be liable for a given WPS violation. [See WPS Interpretive Policy Q & A 16.12]. Therefore, EPA encourages that such field inspections of workers hired by a Farm Labor Contractor include BOTH interviews of workers and agricultural employers. Inspectors should determine who (FLC or agricultural employer) has the responsibility for compliance with each applicable Category/Element of the WPS; detected violations and appropriate enforcement actions are to be addressed with the responsible employer(s). If both the workers of a Labor Contractor AND the hiring agricultural establishment/employer are both inspected, then these inspections can count as two complete WPS inspections as long as the State has legal authority to conduct FLC only inspections, these two different employer inspections are treated by the State as two distinct case files, and all the applicable elements are covered. Either inspection is counted as a Tier I if inspected within 30 days after the expiration of the REI and counted as Tier II if conducted beyond 30 days of the REI. Office only visits of Farm Labor Contractors cannot count as a complete WPS inspection, or as a regular agricultural use inspection on the EPA Federal 5700-33H Form.

6. Inspectors currently use a WPS checklist during an agricultural inspection to supplement and support the narrative report. Is it still acceptable?

Yes, the checklist may be included in the final inspection report and with narrative as an attachment. With the release of this revised Guidance, there is an expectation that all States will re-examine their existing WPS inspection form and checklist against this Guidance to ensure that procedures are appropriate and that all listed Categories and Elements are included.

7. Does completion of a WPS checklist alone by an inspector count as a WPS inspection?

Yes, an inspection may be counted as a WPS agricultural-use inspection if the WPS checklist covers all applicable WPS Inspection Categories/Elements, it includes an additional short narrative which further details the nature of any detectable violations, and indicates if one or more workers and handlers are interviewed as part of the inspection. Determining compliance with the WPS is accomplished by implementing a series of investigative efforts, such as, questions, observations, interviews, review of pesticide labels, etc. Evidence (labels or label information, training records, application records, photos, statements from interviewees, lab analyses, etc.) and narrative details of

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violations detected are necessary for a case file in order for it to be considered a complete WPS inspection.

8. **While conducting a WPS inspection at a facility, only one worker is interviewed even though handlers are present. Does this satisfy the requirement to interview employees to count as a WPS inspection?**

No. EPA does not consider an agricultural inspection countable as a WPS unless the inspector has interviewed at least one worker AND one handler, if applicable, as part of a WPS inspection, or has provided written explanation why no workers and/or handlers were interviewed. EPA prefers that two or more workers and handlers are actually interviewed, depending on available time and circumstances of the inspection.

9. **An inspector is unable to interview workers due to difficulty in communicating with these persons because they are not fluent in English. Does this count as a WPS inspection?**

Yes, if the appropriate Categories/Elements of Tier I or Tier II inspections are met, and the inspection report includes an explanation of how the inspector made a good faith effort to conduct the interviews, or was unable to conduct the interviews during the inspection for another reason such as:

- (a) No workers or handlers were present employed at the time of the inspection.
- (b) The employer(s) would not consent to allow employees to be interviewed when inspectors asks;
- (c) Employees would not consent to being interviewed when asked, for personal reasons (such as fear of retaliation);
- (d) The inspector cannot communicate with the employee because of language barriers (except in For-Cause inspections for an employee who is the complainant).

Language barriers between inspectors and workers/handlers may be considered the sole explanation for not conducting interviews (except in For-Cause inspections for an employee who is the complainant). The efforts to attempt to interview should be noted in the final inspection report. During For-Cause inspections language barriers are also an acceptable reason for not conducting employee interviews, except for the employee who is the complainant. In alleged For-Cause inspections the inspector must overcome a language barrier to interview the employee who is the complainant. Under this circumstance a For-Cause inspection is not considered complete or countable on the 5700 Form unless the complaint is interviewed.

States are strongly encouraged to develop and create ways to overcome this obstacle,

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such as by hiring bilingual inspectors, identifying translator resources and translation services, and identifying farm labor group with volunteer translators. Inspectors may also attempt to meet with workers at another place and time when a translator is available. EPA will monitor State's efforts to overcome this inspection impediment.

10. What approach should be taken in responding to an alleged employee pesticide exposure or suspected WPS noncompliance (via tip/complaint)?

A WPS inspection should be performed, addressing all applicable WPS Categories/Elements in this Guidance. The State should follow established Standard Operating Procedures for agricultural worker For-Cause complaints, carefully and thoroughly documenting detected WPS violations. These procedures should also include interviewing the employee who alleged pesticide exposure, as well as other appropriate persons (including other workers and handlers). During these inspections, language barriers are not an acceptable excuse for not conducting an interview with the employee who is the complainant.

11. If an inspector interviews workers a month or more following a site-specific compliance inspection for WPS, can that work be counted as two WPS inspections?

EPA does not consider this inspection scenario at the same agricultural establishment as two separate inspections because all effort is being made to complete parts of a specific inspection, albeit a month or more apart. The inspection would be credited as the completion of one WPS agricultural-use.

12. Can a routine WPS inspection be undertaken over 30 days beyond the last pesticide application on an establishment using a WPS labeled pesticide product?

Yes, if all applicable WPS Inspection Categories/Elements are covered to the best of the inspector's capability, with worker and handler interviews. The State inspector is encouraged to document all detected violations and obtain a written statement of non-compliance from the employer; the State may subsequently take appropriate enforcement action depending only on State authority to do so. This inspection can be only reported to EPA as a WPS Tier II Compliance Monitoring Inspection, regardless whether the violation, as relayed to the inspector, actually occurred within 30 days or not.

13. An inspector revisits an establishment/employer who previously was inspected for WPS compliance and found to have one or more violations. Can the State count this re-inspection as a WPS inspection on the EPA WPS 5700 Form if the inspector examines only those Categories/Elements found previously to be absent or in violation, and overlooks other Elements covered already during the first visit?

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No. EPA considers re-inspections to be an important component of a State's compliance monitoring program to verify that a previous violator has corrected the necessary deficiencies and is now in full compliance with the WPS. EPA recommends that all States re-inspect a proportion of previous WPS violators. In order to count as a WPS inspection, all re-inspections must be thorough, examining all applicable WPS Categories and Elements as in this Guidance, as well as conducting employee interviews (or provide written justification why interviews are not performed). These re-inspections can be counted as Tier I if conducted within 30 days of the REI and are Tier II if conducted after 30 days of the REI. Re-inspections which consist only of the examination of select WPS Categories/Elements which were previously found to be in violation does not count as a complete WPS inspection because the inspector did not re-examine all applicable Elements. However, a re-inspection which only partially covers the WPS Categories/Elements may be counted as a regular agricultural use inspection.